

## Security Freeze Bill

Commentary on Sections – For September 11-12, 2006, meetings. NEW items marked.

<b>Section 1 Definitions</b>			
<b>Section/Subsection</b>	<b>Explanation</b>	<b>Issue</b>	<b>Comment</b>
Sub (2) Consumer reporting agency	Uses the text from the federal definition in 15 U.S.C. Sec. 1681a(f)	Some say just to reference 15 USC etc.	More user friendly to have text in MCA
Sub (3) Credit report	Text is synonymous with consumer report as defined in 15 U.S.C. 1681a(d)(1). Could use term “consumer report” throughout instead of “credit report”.	Definition of consumer report includes more than a credit report. ChoicePoint notes that credit reports are a subsection of consumer reports.	ChoicePoint OK with language and definition if exclusion (14)(n) is included because not all contacts to CRAs and others are for credit. Some are for other purposes.
Sub (5) Proper identification	Says “information sufficient to verify identity”.	Is vague good? Could provide examples of ID that could be used	Some states say CRA may require additional info: CO, IL, KY, NC, TX, WI
Sub (7) Security freeze	Prohibits releasing “all or any part of the consumer’s credit report or credit score...”  <b>NEW:</b> “exceptions and exemptions” – because of change to Section 9 to differentiate “access/use” and exemption from placing freeze	Some states say specifically for extension of credit, e.g. KS, KY, TX, UT	Not referencing extension of credit means inclusion of phone, utility accounts and employment or other contacts. States that do not reference extension of credit include: CA, LA, ME, NC, NJ, WA, WI EAIC chose May 12 the inclusive approach.
<b>Section 2 Placement of freeze</b>			
Sub (1) regular or certified mail	Dispute over any kind of method other than certified	Most states say certified mail	EAIC said May 12 to allow electronic
Sub (2) electronic	Quicker method.  <b>NEW:</b> “specified by the consumer reporting agency” and “provided” - clarifications	Some states say other methods allowed	NJ requires-- wants within 15 minutes. UT requires by phone and electronic method chosen by CRAs
<b>Section 3. Consumer reporting agency duties</b>			
Sub (1) : --Placement no later than 5 days	Most states say within 5-days: CA, CO, CT, IL, KS, LA, ME, NV, NJ, NC, SD, TX, WA, WI 10 days = KY	Not an issue	
Sub (2) procedure for ID theft victim	Within 24 hours	Old draft said victim of ID theft “and” who has an ID theft passport	Problem with delay in getting ID theft passport. Fee section says ID theft victim can get free as can someone

			notified of security breach. Requiring ID theft passport would place burden on victim not on <i>potential</i> victim.
Sub (3) Confirmation 5 days (AG ) 10 days (CDIA)	5 days confirm =NJ 10 days = CA, CO, CT, IL, KS, KY, LA, ME, NV, NC, SD, TX, WA, WI		Chose 5 business days at July 14 meeting.
Sub (3) similar device along with password or PIN	CDIA has requested wording for “similar device”	Consumers Union questions what this is.	Chose “or similar device” at July 14 meeting.
<b>Section/Subsection</b>	<b>Explanation</b>	<b>Issue</b>	<b>Comment</b>
<b>Section 4. Temporary lift</b>			
For specific time or specific party			EAIC said in May to allow both options
Point of contact designated by CRA	CDIA-requested language	Language used by: CA, CO, CT, IL, KS, KY, LA, ME, NC, SD, VT, WA, WI	OK’d at July 14 meeting.
Timing of lift (thaw)	No later than 3 business days or at earliest time generally provided by another state, whichever is earlier (earliest time language requested by AG)	3 business days: CA, CO, CT, IL, KS, KY, LA, ME, NJ, NV, NC, SD, TX, UT, VT, WA, WI	At July 14 meeting EAC chose to remove “at earliest time” language and leave 3 business days.
Develop procedures <b>NEW: technical, adding “to implement this section”</b> Procedure for lifting	Make available by telephone, fax, electronic means within one year of effective date. Gives CRAs time to develop.	Most states say “may” or allow method developed by CRAs. NV, NJ, TX have alternate methods	<b>✓ Need to choose on technical addition</b>  At July 14 meeting EAC chose leave language of 3(c) as is.
<b>Section 5. Removal of freeze by Consumer Reporting Agency</b>			
Notification	AG version says CRA to notify consumer in writing at least 5 business days prior to removal of freeze.	Not in other states	At July 14 meeting EAC chose to require notification 5 days before CRA removes freeze when not at consumer’s request.
<b>Section 6. Third-party contacts</b>			
Sub (1) Application can be treated as incomplete w/ freeze <b>NEW:</b> language changed from “exempted” to “excepted” to fit change in Section 9.	Common approach	No issue	<b>Intended to be technical change.</b>  <b>✓ Need to choose</b>

Sub (2) Notification of consumer when attempts made for credit use, unless for account review	Proposed by AG	CDIA says this is unique.	At July meeting EAC voted to remove this subsection.
<b>Section 7. Removal of freeze by consumer</b>			
Point of contact, device (as in Sec. 4)	Requested by CDIA		OK'd at EAC July meeting
<b>Section/Subsection</b>	<b>Explanation</b>	<b>Issue</b>	<b>Comment</b>
<b>Section 8. Notice of rights</b>			
Pin, password or device	CDIA suggests "device"	Is this mentioned elsewhere?	OK'd at EAC July meeting
Shorter time frame if electronic	EAIC has said electronic notification can be used.	This would match electronic option	EAC voted against at July meeting
Explanation to active seekers of credit	In original	Removed because not a right	OK'd at EAC July meeting
<b>Section 9. Exceptions and Exemptions</b>			
<b>NEW:</b> Sub (1) changes outlining to provide for exceptions and exemptions.	Exceptions are "for the purposes of accessing or using a credit report" – now in sub (1) Exemptions are "exempt from placing a security freeze on a credit report" – now in sub (2)	CDIA requested. More clearly separates two groups. Earlier version was overall exemption. Most states have separate sections. Single section is user friendly.	✓ <b>Need to choose</b>  <b>When checked with various groups, either in favor (CDIA) or not concerned about change.</b>
<b>NEW:</b> Sub (1) (a) (b) (c) adds words "when using a credit report" or equivalent	May not be needed if outlining is changed as noted above.		✓ <b>Need to choose</b> If new sub (1) used, probably don't need this
<b>NEW:</b> Sub (1) (g) adds "for use of a credit report for purpose of prescreening"	Requested by CDIA	Not sure what impact is	OK'd at EAC July meeting
Sub (12) Exempts insurance industry	Work group OK'd exclusion.	Some exclude: KY, NC, NH, OK, SD, VT (property-casualty), WI	Others do not: CA, CO, CT, IL, KS, LA, ME
Sub (14 - formerly n) excludes database with information on items other than credit, including criminal records, tenant or employment screening, fraud prevention or detection, personal	Repeats some of other exclusions but apparently intended for those information brokers that work with CRAs . Not all activities are covered under FCRA. Consumers Union suggests adding language to address persons not covered by FCRA and also suggests using words "solely"	Florida uses solely Kansas says solely and for FCRA purposes. Kentucky uses solely.	At July meeting EAC voted to accept new subsection with language of "entirely" and "solely".  To match "person" approach – need to vote on changing "consumer reporting agency's" to

loss history. <b>NEW:</b> To match outlining – need to have “person” as subject so included language “for its”	and entirely because otherwise databases that are a mix of credit and other information could be excluded, creating loophole.		“consumer reporting agency for its” database.  ✓ <b>Need to choose</b>
<b>Section 10. Fees</b>			
Sub (1 ) Requires fee except for victim (under Sub 2)	States vary on what they charge: Up to \$10 fee for CA, CO (on 2 <sup>nd</sup> & subsequent freeze), CT, KY, LA, ME, NC, OK, SD, VT, WI. Some states add CPI increase. CDIA says fee is for administrative set-up and costs.	Other – NV charges \$15, NY \$5 for 2 <sup>nd</sup> & subsequent freeze, TX \$8, UT “reasonable”	EAC chose \$10 at May 12 meeting. Fee would apply to each CRA.  At July meeting EAC changed to \$3 for initial action, and free for victim.
Sub (2) Language says free to victim who has submitted a valid police report or been notified of a security breach.	Requiring a police report may impose a greater burden on victim than on potential {breach} victim, who does not have to provide a police report (see above, Sec. 3, sub (2) Language bolded makes it easier for victim to submit proof.	All states offer free to victims.	Work group suggested.  At July meeting EAC voted for broader language on police report and removed free fee reference to person notified of security breach.
<b>Section/Subsection</b>	<b>Explanation</b>	<b>Issue</b>	<b>Comment</b>
Sub (3) Fee for obtaining password, PIN (or other device)	Procedure for charging consumer if they misplace, forget password. Requested by AG. Device language is CDIA.	Not sure there is an issue. At least one other state uses language.	OK’d at EAC July meeting
<b>Section 11. Penalties</b>			
(1) Person who fails to comply with freeze	Actual damages of consumer or damages of not less than \$100 or more than \$1,000 plus punitive damages and court costs	AG suggested both injunctive relief and civil penalty of up to \$10,000 for each violation plus damages under other civil laws	EAC chose the actual damages or \$100 to \$1000 range at May 12 meeting (version offered by CDIA)  At July meeting EAC removed word “actual”.
(2) Person who falsely obtains report, requests a freeze or a thaw or removal	Actual damages sustained by consumer reporting agency or \$1,000, whichever is greater.		At July meeting EAC removed word “actual”.
(3) Person negligently complying with requirements	Actual damages of consumer and court costs. Harassment, bad faith provisions.		At July meeting EAC removed word “actual”.
<b>Section 14. Effective date</b>			
Proposed for July 2007	Some people prefer effective date farther in future to let Consumer Reporting Agencies develop response system.		OK’d at EAC July meeting